



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GROVER SELLERS

ATTORNEY GENERAL

Honorable Joe Fultz  
County Attorney, Grimes County  
Anderson, Texas

Dear Mr. Fultz:

Opinion No. O-5939

Re: Can the Commissioners' Court  
of Grimes County hire a deputy  
in a county office, or any  
other person, otherwise quali-  
fied to become a County Auditor,  
to perform the duties ordinarily  
discharged by a County Auditor  
without a legal appointment as  
such under the statutes?

In a recent communication by mail, together with a  
subsequent telephone conversation, you presented to us a ques-  
tion which we hereinabove set out in substance.

Grimes County has a population of 21,960 according  
to the 1940 Federal Census, and an assessed tax valuation of  
\$10,249,980, according to the records of the State Auditor.

There are only two types of auditors provided for in  
our statutes for the auditing of county affairs. For counties  
of the classification of Grimes County, Articles 1646 and 1647,  
Vernon's Annotated Civil Statutes, provide for the appointment  
of a regular County Auditor, and Articles 1641 and 1646a, Ver-  
non's Annotated Civil Statutes, provide for the appointment of  
a special Auditor.

We understand that your commissioners' court does not  
contemplate operating under either of the above provisions of  
the law.

It is well settled that the commissioners' court has  
only such power and authority as the statutes and Constitution  
confer upon it, either expressly or by necessary implication.  
11 Tex. Jur., p. 565, 632.

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We have found no statutes either expressly or by implication conferring authority upon the commissioners' court of counties of this classification to employ a person either with or without the qualifications required of either a special or regular county auditor, to perform the duties or render the services of such auditors without complying with the provisions of Article 1641 and Article 1646a or Article 1646 and Article 1647, Vernon's Annotated Civil Statutes.

Therefore, it is the opinion of this department, and we so hold, that said question be answered in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robert L. Lattimore Jr.*  
Robert L. Lattimore, Jr.  
Assistant

RLL:EP

